

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

SANDRINA BACCHUS

Plaintiff

-and-

1. BANK OF NOVA SCOTIA
2. THE FIRST MARSHALL OF
THE SUPREME COURT
3. THE REGISTRAR OF THE
SUPREME COURT

Defendants

Jointly and severally

Mr. Nandlall for the Plaintiff/Applicant

Mr. Fields, S.C., for the first named Defendant/Respondent

No appearances for the second and third named Defendants/Respondents

DECISION5th February, 2010

On the 15th January 2009 the Applicant Sandrina Bacchus filed a generally endorsed writ with an ex-prate application by way of affidavit for an interim injunction which was granted by the Honourable Chief Justice Mr. Ian Chang on the 15th January 2009, pending the hearing and determination of a summons to continue the injunction made returnable for the 27th January 2009.

Mr. Richard B. Fields entered an appearance for the first named respondents, the Bank of Nova Scotia, and thereafter filed an Affidavit in Answer to which an Affidavit in Reply was filed. Subsequently, submissions were filed by the Applicant and the first named Respondents and the matter came up for hearing of the summons in Chamber Court on January 12th 2010.

The matter was fixed for arguments on 28th January 2010 when only the Plaintiff and her Attorney appeared in court. The Respondents and their Attorney were absent.

The matter was then fixed for decision on 5th February 2010 when this court ordered that the interim injunction granted by the Honorable Chief Justice be made interlocutory until the hearing and determination of the action.

The Applicant claims that she is the owner of the property situate at Lot 67 Garden of Eden, East Bank Demerara , described in Certificate of Title No.08/3273 as Zone E.B.D, Block XXIX, Parcel 75. She said the property is unencumbered, there being no registered encumbrances annotated on the Certificate of Title nor any indebtedness to the first named Respondent by way of mortgage.

The Applicant claims that her husband had previously owned the property by certificate of title and that his title was free from any encumbrance, and that the property was transferred to her also free of any encumbrance. The applicant also said that the previous owner, her husband, had secured a mortgage in respect of the property on the remainder of the unexpired term of a lease for a term of 20 years and that the lease has since expired, and that upon the expiration of the said lease, her predecessor was issued with a certificate of title.

The 3rd named Respondent, the Registrar of Deeds, had caused the said property to be advertised on 10th January 2009 to be sold at a public auction at the instance of the first named Respondent.

As a result the plaintiff filed this action claiming a declaration that the advertisement of sale is unlawful, illegal, null, void and of no effect, damages in excess of \$1,000,000 for negligence, and an injunction restraining the defendants/respondents by themselves, their servants and/or agents from

selling or advertising for sale the plaintiff's property situated at Lot 67 Garden of Eden, East Bank Demerara, described in Certificate of Title No.08/3273, as Zone E.B.D, Block XXIX, Parcel 75.

As stated before, the said injunction was granted, on the 15th January 2009 by the Honorable Chief Justice.

The Plaintiff has exhibited two Certificates of Title and a Government Lease No.771. The two certificates of title have no annotations regarding any encumbrances on the property. The Government Lease No. 771 of 1998 in respect of lot numbered lot 67 Garden of Eden E.B.D, also described as Zone E.B.D, Block XXIX, Parcel 75 shows annotations with respect to several mortgages passed in favour of the Bank of Nova Scotia. After the lease expired title was passed to Fizul Bacchus, the lease holder, and husband of the plaintiff/applicant.

The first named defendant, the Bank of Nova Scotia, in their Affidavit in Answer have stated that they are aware of a certificate of title in favour of the Plaintiff but alleged that there are four mortgages attached to the property described as lot 67 Garden of Eden, East Bank Demerara and that the said property is the security for the said mortgages.

The first named Defendants also stated that they have seen the certificate of title registered in the name of Fizul Bacchus, the plaintiff's husband, but they deny that the property is encumbered, although there are no annotations of any registered encumbrances on either of the two certificates of title. The first named Defendants claim that the mortgages registered against the said Fizul Bacchus which are annotated on lease No.771 have not been cancelled and are still extant.

The defendants claim that the encumbered certificate of title given to the said Fizul Bacchus and later transferred to the plaintiff can only be due to the inadvertence of the staff at the Land Registry, and that these mortgages were registered in the Deeds Registry as mortgages No.986 of 1996, 453 of 1998, 76 of 1999 and 1345 of 2000, and ought to have been recorded on the face of the certificate.

The first named Defendants further claim that on the 10th June 2005 they obtained judgment against Fizul Bacchus in foreclosure proceedings, and subsequently execution proceedings were instituted against him.

For these reasons the first named Defendants claim that the injunction should be discharged.

In her submissions the Applicant claims that the Certificate of Title issued to her is unencumbered and that at the time it was transferred to her there was no caveat lodged against the Registrar or any attempt made by the first named respondent/defendant or anyone to oppose the transfer of the property.

The applicant claims that her husband Fizul Bacchus had secured loans by way of mortgages from the defendant Bank on the remainder of a lease, and that the lease had expired and the land had reverted back to the State.

The legal issues raised by the affidavits and in the submissions as to whether the mortgages now attach to the plaintiff's property, or whether the mortgages only attached to the unexpired term of the lease, which reverted back to the State when the lease expired, are in my mind serious questions which have to be tried, and that this court "cannot embark on anything like a trial of the action on conflicting affidavits in order to evaluate the strength of either party's case" (**American Cyanamid**, by Lord Dip lock)

The issues raised are serious legal questions which, in my opinion, would require lengthy and detailed arguments, and at this stage the court is only required to find whether the plaintiff's has a serious question to be tried, whether the balance of convenience favors the grant and whether the status quo should be preserved.

It appears front the facts that there is a serious issue of law to be determined and should the first named Defendants be allowed to sell the Plaintiff's property, then the Plaintiff is likely to suffer irreparable harm which could not be compensated in damages, since the Plaintiff would be deprived of her property before the merits of the case had been tried and the first named Defendants would have succeeded in having the fruits of their defence without a trial. The balance of justice and the balance of convenience clearly favors the continuation of the interim injunction until the hearing and determination of the substantive action.

In the circumstances this court ordered that the interim injunction granted by the Honorable Chief Justice on 15th January 2009 be continued until the hearing and determination of the action herein.

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Diana F. Insanally

Puisne Judge

5th February 2010